INDEX.

PETITION FOR WRIT OF CERTIORARI 1

Summary of Matter Involved 1

Basis of Jurisdiction 2

Questions Presented 2

Reasons for Granting Writ 2

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI 7

Jurisdiction 7

Statement of Case 8

Specification of Errors 8

Argument 9

—Decision Extends Horst 9

—Upsets Cash Basis Returns 9

—Creates Unsuspected Liabilities 11

Conclusion 12

TABLE OF AUTHORITIES.

Cases.

Anthony, S. W., Estate v. Commissioner, 155 F. 2d 980 ..... 11, 12

Austin, Commissioner v., 6 T. C. 593 ..... 1, 7

Blair v. Commissioner, 300 U. S. 5 ..... 3, 4, 9, 10, 11, 12

Burnet v. Leininger, 285 U. S. 136 ..... 4, 11

Corliss v. Bowers, 281 U. S. 376 ..... 4, 11

Eubank, Helvering v., 311 U. S. 122 ..... 4, 11

First State Bank of Stratford v. Commissioner, 8 T. C. ...., No. 92 ..... 4, 10, 11

Georgia State Savings Bank, 4 B. T. A. 748 10

Harrison v. Schaffner, 312 U. S. 579 ..... 4, 11

Horst, Helvering v., 311 U. S. 112.....2, 3, 8, 9, 10, 12
Lucas v. Earl, 281 U. S. 111.....4, 11
Pearce v. Commissioner, 315 U. S. 543.....3, 4, 9, 10, 11, 12
Sunnen v. Commissioner, 161 F. 2d 171.....4, 11

Statutes.

Internal Revenue Code, Section 22(a)..... 3, 9
26 U. S. C. 41..... 3
26 U. S. C. 1141..... 2, 7
28 U. S. C. 347..... 2, 7

In the Supreme Court of the United States

OCTOBER TERM, 1947.

No. . . . . .

IDA S. AUSTIN,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals
For the Sixth Circuit.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Ida S. Austin, prays that a writ of certiorari issue to review the decision of the United States Circuit Court of Appeals for the Sixth Circuit entered in the above entitled case on May 12, 1947, affirming the decision of the Tax Court of the United States.

SUMMARY OF MATTER INVOLVED.

The question is whether the federal income tax law requires petitioner, a cash basis taxpayer, to include as income interest paid on a promissory note after she had parted with all control and ownership of the note by gift to her adult children, the interest on the note having been paid directly to the children as holders of the note.

The Tax Court, 6 T. C. 593, held such interest taxable to petitioner (R. 116). The Circuit Court of Appeals for the Sixth Circuit affirmed (R. 123) in an opinion not yet officially reported.

BASIS OF JURISDICTION.

United States Code, Title 26, Section 1141, provides for review by the Circuit Court of Appeals of decisions of the Tax Court of the United States and authorizes review by this Court upon certiorari in the manner provided in United States Code, Title 28, Section 347. The decision of the Circuit Court of Appeals sought to be reviewed was rendered May 12, 1947 (R. 123). Petition for rehearing (R. 129) was filed May 26, 1947 (R. 128) and denied June 3, 1947 (R. 130).

QUESTIONS PRESENTED.

The questions presented are:

1. Whether interest on a note paid after petitioner has parted with all control and ownership of the note is taxable to petitioner.
2. Whether the rule of *Helvering v. Horst,* 311 U. S. 112, taxing a father on interest subsequently paid on bond coupons given by him to his son, where the father retained the bonds, should be extended to make taxable to the assignor interest paid upon a note after the assignor had parted with all control and ownership of the note.

REASONS FOR GRANTING WRIT.

1. As the Circuit Court of Appeals recognized, this case turns on the question (R. 125):

> "Should *Helvering v. Horst, supra,* be interpreted to mean the father would still have been taxable on the coupon interest collected by his son *had he given the latter the bonds as well as the coupons* during the taxable year?"[1]

The decision herein answers that controlling question in the affirmative. It thus extends *Horst* not only beyond anything there decided but beyond anything necessarily

---

[1] Emphasis supplied throughout unless otherwise indicated.

required by that decision, and farther than that case has heretofore been carried. Thus, interpretation is made to serve the place of amendment so as to bring within the reach of the taxing statute[2] something called for neither by its letter nor its spirit as defined by *Horst*.

2. The decision is in conflict with *Blair v. Commissioner*, 300 U. S. 5, and *Pearce v. Commissioner*, 315 U. S. 543, which establish the fundamental principle that income is not taxable to a donor after the income-producing corpus has been given away. The Circuit Court of Appeals sought to distinguish *Blair* and *Pearce* on the ground that there the income was produced after the transfer of the corpus while here the interest, although paid to the donees after the gift, was attributable to a period prior to the gift. *Blair* and *Pearce* cannot be so distinguished. To do so is to deny to the taxpayer her statute-given right (United States Code, Title 26, Section 41) to report on a cash basis and force her to an accrual basis.

---

[2] The statute involved is Internal Revenue Code Section 22(a) which reads as follows:

"Sec. 22. GROSS INCOME.

(a) General Definition.—'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing), of whatever kind, and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly. In the case of judges of courts of the United States who took office on or before June 6, 1932, the compensation received as such shall be included in gross income."

3. The distinction drawn by the Circuit Court of Appeals being invalid, its decision also conflicts with *Sunnen v. Commissioner,* 161 F. 2d 171, decided by the Circuit Court of Appeals for the Eighth Circuit on April 28, 1947, fourteen days before the decision in this case. That case held a husband not taxable on royalties paid to his wife after he had assigned the royalty contracts to her.

4. The decision is in conflict with *First State Bank of Stratford v. Commissioner,* 8 T. C. ....., No. 92, decided three weeks prior to the decision here under review. There the Tax Court held petitioner not taxable on interest paid on promissory notes after they had been conveyed by petitioner, notwithstanding the fact that the interest there, as here, was attributable to a period prior to the transfer.

5. The fact that three courts considering the same kind of problem at substantially the same time have arrived at different results underlines the importance of decision here to restore a measure of uniformity to this area of the law.

6. The decision creates uncertainty in the administration of the tax law in that there is no limit on the time within which an assignor of income-producing property may be taxed on subsequently paid income. The decision obliterates the distinction between the separate assignment *of income* (which is taxable to the assignor as was held in *Lucas v. Earl,* 281 U. S. 111, *Corliss v. Bowers,* 281 U. S. 376, *Burnet v. Leininger,* 285 U. S. 136, *Helvering v. Eubank,* 311 U. S. 122, *Harrison v. Schaffner,* 312 U. S. 579) and the assignment of income-producing *corpus* (which makes all subsequently paid income taxable to the donee and not to the donor, as was pointed out in *Blair* and *Pearce*). The result is that the assignor of income-producing property will be liable for taxes on the income therefrom without limit in time. *Lucas v. Earl, supra, Corliss v. Bowers, supra, Burnet v. Leininger, supra, Helvering v. Eubank, supra, Harrison v. Schaffner, supra.*

When this principle is applied to situations involving successive assignments, and instances where the assignor will have no means of ascertaining the amount of income paid to assignees in later years, it is evident that the decision below interprets this Court's decisions in such a way as to create confusion and uncertainty in the administration of the internal revenue laws.

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari to review the decision of the Circuit Court of Appeals should be granted.

ASHLEY M. VAN DUZER,
THOMAS V. KOYKKA,
CHARLES O. DEWOODY,
Counsel for Petitioner.

McKEEHAN, MERRICK, ARTER & STEWART,
2800 Terminal Tower,
Cleveland 13, Ohio,
Of Counsel.

July 19, 1947.

In the Supreme Court of the United States

OCTOBER TERM, 1947.

No. . . . . .

IDA S. AUSTIN,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

This is an application for a writ of certiorari to review a decision of the United States Circuit Court of Appeals for the Sixth Circuit (R. 123) not yet officially reported, affirming a decision of the Tax Court of the United States (R. 116) reported in 6 T. C. 593.

JURISDICTION.

Jurisdiction is conferred by United States Code, Title 26, Section 1141, and Title 28, Section 347, providing for review upon writ of certiorari by this Court of decisions of Circuit Courts of Appeals in cases coming from the Tax Court of the United States.

The decision of the Circuit Court of Appeals was entered May 12, 1947 (R. 123); petition for rehearing (R. 129), filed May 26, 1947 (R. 128) was denied June 3, 1947 (R. 130).

STATEMENT OF CASE.

In 1932 petitioner, Ida S. Austin, a cash basis taxpayer, in consideration of money loaned to her husband, W. J. Austin, received his promissory note for $76,128.00 (R. 112). It was secured by 1000 shares of common stock of The Austin Company, a family corporation (R. 42). In 1940 petitioner gave the note to her three adult children (R. 112). At that time $71,569.54 of principal and $43,320.04 of interest was unpaid (R. 112). A few weeks after the gift, W. J. Austin was killed in an airplane accident (R. 112). On December 31, 1940, the executor of his estate paid $39,904.31 of accumulated interest on the note in equal parts to each of the three children (R. 112). In 1941 there was an additional payment of interest in the amount of $3,415.73 (R. 112). This additional interest, having been paid in a later year, was held by the Tax Court not taxable to petitioner in 1940 and is not here involved.

Petitioner filed a gift tax return for 1940, reporting the note as of a value of $114,889.58, being the amount of the unpaid principal and interest (R. 112). She paid a gift tax on that amount (R. 112).

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals, affirming the Tax Court, held that the $39,904.31 of interest paid to the children on December 31, 1940, is taxable to petitioner notwithstanding the fact that she never received the money, having previously parted with all control and ownership of the note. The Circuit Court of Appeals erred in holding:

1. That interest on the note paid after petitioner had parted with all control and ownership of the note was taxable to petitioner.
2. That the rule of *Helvering v. Horst*, 311 U. S. 112, taxing a father on interest subsequently paid on bond coupons given by him to his son, where the father retained the bonds, should be extended to make taxable to the assignor interest paid upon a note after the assignor had parted with all control and ownership of the note.

ARGUMENT.

The Commissioner and the courts below held the interest includible in petitioner's income under Internal Revenue Code Section 22(a). The statute (see note 2, p. 3, *supra*) does not in express terms make such interest taxable to petitioner. To stretch it to cover such a case as this, the courts below have not only departed from recognized principles but have introduced new uncertainties into the law, as will be pointed out.

—Decision Extends Horst.

The decision under review extends *Helvering v. Horst*, 311 U. S. 112. It interprets *Horst* (R. 125) "to mean that the father would still have been taxable on the coupon interest collected by his son had he given the latter the bonds as well as the coupons during the taxable year." *Horst*, however, plainly indicates that it was the separation of the interest bearing coupons from the income-producing property, and the separate gift of the interest coupons while the bonds themselves were retained, which constituted the basis of that decision. The Court in *Horst* said (pp. 115 and 120):

> "The holder of a coupon bond is the owner of two independent and separable kinds of right. One is the right to demand and receive at maturity the principal amount of the bond representing capital investment. The other is the right to demand and receive interim payments of interest * * *."
>
> "When, by the gift of the coupons, *he has separated his right to interest payments from his investment* and procured the payment of the interest to his donee, he has enjoyed the economic benefits of the income * * *."

—Upsets Cash Basis Returns.

The Circuit Court of Appeals distinguished *Blair v. Commissioner*, 300 U. S. 5, and *Pearce v. Commissioner*, 315 U. S. 543, on the ground that they apply only (R. 127) "to income earned *after* the gift of the property and not to

income accumulated *before* the gift, as in the case at bar."[1] This distinction is novel and without support in law. The *Blair* and *Pearce* opinions certainly do not thus restrict those decisions. Moreover, it is settled law that a cash basis taxpayer is not in receipt of interest until it actually is received. This rule has been applied without exception to interest due but uncollected on promissory notes. *Georgia State Savings Bank,* 4 B. T. A. 748. The present decision in contradiction of that rule, if allowed to stand, will have serious repercussions in its application to cash basis taxpayers holding notes carrying due but uncollected interest.

In *Horst* the interest coupons represented interest attributable to the period prior to the gift in that the gift of the coupons was made (p. 114) "*shortly* before their due date" and that fact also tends toward refuting the conclusion of the court below that the distinction between assignments of income and assignments of income-producing property is to be obliterated where the income is attributable to the period prior to the gift.

The distinction drawn between income earned before and after assignment of the corpus was rejected by the Tax Court itself in *First State Bank of Stratford v. Commissioner,* 8 T. C. ...., No. 92, decided after the argument of this case in the court below. In that case, as here, petitioner assigned promissory notes, and shortly thereafter interest was paid to the assignees. Notwithstanding the fact that the interest was attributable to the period preceding the assignment, the Tax Court held it not taxable to the assignor. The Tax Court predicated its decision on the point that there was not an assignment of "the mere right to receive future income." Distinguishing *Horst,* the Tax Court in that case said:

> "Not mere interest coupons, *but the notes, with all their rights,* were assigned to the stockholders. The property which produced the income was assigned—the tree and the fruit."

---

[1] The Court's emphasis.

—Creates Unsuspected Liabilities.

If the decision below stands, grave difficulties in the administration of the tax laws will arise from the fact that there is no limit upon the number of years following the assignment of property during which the income will be taxable to the assignor. The assignor will always be taxable in whatever year the income shall be paid, no matter how far in the future that may be. *Lucas v. Earl,* 281 U. S. 111; *Corliss v. Bowers,* 281 U. S. 376; *Burnet v. Leininger,* 285 U. S. 136; *Helvering v. Eubank,* 311 U. S. 122; *Harrison v. Schaffner,* 312 U. S. 579. The decision will be productive of shocking consequences to taxpayers who find that assigned, and perhaps even supposedly worthless property, years later has yielded an income which under the rule of this case will be taxable to them.

The present case is the only decision of any court which furnishes precedent for so strange a result. It does so by failing to give effect to the fundamental distinction between assignments of income-producing property and assignments of income recognized in *Blair* and *Pearce* and lately applied by the Eighth Circuit in *Sunnen v. Commissioner,* 161 F. 2d 171, and the Tax Court in *First National Bank of Stratford v. Commissioner, supra.*

Thus, the decision, if it stands, will supply a precedent requiring that income tax be paid by an assignor of income-producing property who in many, and perhaps most instances, will have no means of ascertaining the amount of income on which he is to pay the tax, while at the same time the assignee who receives the income presumably will not be required to pay a tax thereon. That these incongruous results follow from the decision below is illustrated by *S. W. Anthony Estate v. Commissioner,* 155 F. 2d 980. In that case petitioner assigned an oil lease and also made a separate assignment of royalties payable under the lease with reference to earlier years. The assignments were made in 1937 and the royalties were not paid to the assignee

until 1940. The assignor was held taxable in 1940 on the separately assigned royalties. Thus if the present decision is permitted to obliterate the distinction between assignments of income-producing property and assignments of income, *S. W. Anthony* demonstrates that an assignor who does not separately assign the royalties as in *S. W. Anthony*, or the assignor of any other form of income-producing property, nevertheless will be taxable. These complications coupled with others arising from successive assignments where it will be impossible to determine which assignor is to pay the tax, illustrate the confusion which results from an abrogation of fundamental rules.

CONCLUSION.

The decision of the Circuit Court of Appeals extends *Helvering v. Horst*, 311 U. S. 112. The extension is unwarranted. It is in conflict with the settled principles recognized in *Blair v. Commissioner*, 300 U. S. 5, and *Pearce v. Commissioner*, 315 U. S. 543, and other cases to the effect that one who has parted with the ownership to property thereafter is not taxable on income from the property which is paid to the transferee.

The writ should issue and the decision of the Circuit Court of Appeals should be reversed.

Respectfully submitted,

ASHLEY M. VAN DUZER,
THOMAS V. KOYKKA,
CHARLES O. DEWOODY,
Attorneys for Petitioner.

McKEEHAN, MERRICK, ARTER & STEWART,
2800 Terminal Tower,
Cleveland 13, Ohio,
Of Counsel.

July 19, 1947.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	4
Conclusion	6

CITATIONS

Cases:

Blair v. *Commissioner*, 300 U. S. 5	4
Burnet v. *Leininger*, 285 U. S. 136	4
Commissioner v. *Tower*, 327 U. S. 280	4
Harrison v. *Schaffner*, 312 U. S. 579	4
Helvering v. *Clifford*, 309 U. S. 331	4
Helvering v. *Eubank*, 311 U. S. 122	4
Helvering v. *Horst*, 311 U. S. 112	4, 5
Lucas v. *Earl*, 281 U. S. 111	4
Lusthaus v. *Commissioner*, 327 U. S. 293	4
Pearce v. *Commissioner*, 315 U. S. 543	4
Sunnen v. *Commissioner*, 161 F. 2d 171, petition for certiorari pending, No. 227, this Term	5
United States v. *Joliet & Chicago R. Co.*, 315 U. S. 44	4

Statute:

Internal Revenue Code, Sec. 22 (26 U. S. C. 1940 ed., Sec. 22)	2

757440—47

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 216

IDA S. AUSTIN, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court (R. 111–115) is reported at 6 T. C. 593. The opinion of the Circuit Court of Appeals (R. 124–128) is reported at 161 F. 2d 666.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on May 12, 1947 (R. 123). A petition for rehearing was denied on June 3, 1947 (R. 130). The petition for a writ of certiorari was filed on July 19, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of

the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Taxpayer made a gift to her three adult children of a demand note and earned but unpaid interest thereon. Was that portion of the interest earned at the date of the gift and actually paid to the children in the same year as the gift, income to the taxpayer under Section 22 (a) of the Internal Revenue Code?

STATUTE INVOLVED

Internal Revenue Code:

> SEC. 22. GROSS INCOME.
>
> (a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal services * * *; also from interest, rent, dividends, securities, * * *. (26 U. S. C. 1940 ed., Sec. 22.)

STATEMENT

The relevant facts as found by the Tax Court may be summarized as follows:

On June 1, 1932, taxpayer's husband, W. J. Austin, gave her a demand negotiable promissory note of which she was payee, in the amount of $76,128 (R. 42). Interest was paid on the note on December 31, 1932, in the amount of $4,558.46, and on September 16, 1940, in the amount of

$2,500. No principal was paid. On November 16, 1940, there was unpaid $71,569.54 principal, and interest to that date of $43,320.04. On that date, taxpayer gave the note to her three children who were of legal age. She filed a gift tax return for the year 1940 and paid a gift tax on the gift. On December 4, 1940, W. J. Austin was killed in an airplane accident. (R. 112.)

The estate of W. J. Austin contained assets ample to pay the note. On December 31, 1940, the executor of the estate of W. J. Austin paid $39,904.31 interest, in equal parts to each of the children. In June 1941, he paid $3,415.73 further interest. (R. 112.) At the time of the gift, the taxpayer had no expectation that the note would be paid, in the sense that she gave the matter no thought, and the question of collectibility of the note did not enter her mind, and was given no consideration by her (R. 113).

The Commissioner of Internal Revenue included in taxpayer's income for 1940 the accumulated interest in the amount of $43,320.04 which taxpayer gave to her children (R. 6). The Tax Court upheld the Commissioner's determination as to the $39,904.31 in interest paid to the children in the tax year, but found for the taxpayer as to the interest paid to the children during the next year (R. 111–116). The Circuit Court of Appeals affirmed (R. 124–128).

ARGUMENT

The decision below is in accordance with, and required by, the well-settled principle that an assignment of the right to receive income is ineffectual to relieve the assignor of tax liability. *Harrison* v. *Schaffner,* 312 U. S. 579; *Helvering* v. *Horst,* 311 U. S. 112; *Helvering* v. *Eubank,* 311 U. S. 122; *United States* v. *Joliet & Chicago R. Co.,* 315 U. S. 44; *Burnet* v. *Leininger,* 285 U. S. 136; *Lucas* v. *Earl,* 281 U. S. 111. *Cf. Helvering* v. *Clifford,* 309 U. S. 331; *Commissioner* v. *Tower,* 327 U. S. 280; *Lusthaus* v. *Commissioner,* 327 U. S. 293. Here the taxpayer had the right to $43,320 in interest, which she could have collected but chose to give to her children by assigning the interest and principal amount of the note as well. During the same year, she had the satisfaction of seeing her children, the objects of her bounty, collect the fruit that grew on the tree while she owned it. This economic satisfaction, under the doctrine of the *Horst* case, is income to the donor. And it is of no consequence, under such a doctrine, that the donor is on a cash and not an accrual basis.

The decision below conflicts neither with *Blair* v. *Commissioner,* 300 U. S. 5, nor with *Pearce* v. *Commissioner,* 315 U. S. 543. In *Blair,* the income sought to be taxed to the assignor was

earned after the assignment of the corpus. This Court distinguished the case on that ground in *Helvering* v. *Horst, supra,* p. 119. Similarly, the reference in the *Pearce* case to the transfer of the corpus by the assignor (p. 554) was in connection with income earned after the assignment. When, as here, the income is earned on property of the taxpayer, she cannot avoid the tax thereon. The court below has not held the taxpayer liable for taxes with respect to income earned on property of the donees.

Although we believe that *Sunnen* v. *Commissioner,* 161 F. 2d 171 (C. C. A. 8th), has been incorrectly decided and we have petitioned for certiorari (No. 227, this Term), the case presents no conflict here. It was there held that royalties paid to the assignee of royalty contracts were not income to the assignor. The court treated the royalty contracts as income producing property analogous to a lease of real property and the royalty analogous to rent. Granting the accuracy of that assumption, with which we are not here concerned, the result is not inconsistent with the decision below since it does not appear that any of the royalties were earned before the assignment of the royalty contracts.

CONCLUSION

The decision below is correct. There is no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

THERON L. CAUDLE,
Assistant Attorney General.

SEWALL KEY,
ROBERT N. ANDERSON,
IRVING I. AXELRAD,
Special Assistants to the Attorney General.

AUGUST 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947